

HOUSE BILL REPORT

ESHB 1335

As Amended by the Senate

Title: An act relating to the unauthorized publication of personal identifying information.

Brief Description: Concerning the unauthorized publication of personal identifying information.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Hansen, Berry, Farivar, Taylor, Ramel, Simmons, Kloba, Bateman, Reed and Lekanoff).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/31/23, 2/3/23 [DPS].

Floor Activity:

Passed House: 2/27/23, 79-16.

Senate Amended.

Passed Senate: 4/6/23, 40-7.

Brief Summary of Engrossed Substitute Bill

- Prohibits publication of an individual's personal identifying information without consent when the publication is made with intent or knowledge the information will be used to harm the individual, or reckless disregard for the risk of such harm, and the publication causes physical harm, significant economic injury, mental anguish, fear of serious bodily injury or death, or a substantial life disruption.
- Establishes a civil cause of action for violations, subject to various exceptions.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hansen, Chair; Farivar, Vice Chair; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Staff: John Burzynski (786-7133).

Background:

Doxing generally refers to the disclosure of another individual's personal information for the purpose of harming or harassing that individual.

Doxing is not specifically prohibited under Washington law. Depending on the specific circumstances, information disclosed, and additional facts the underlying conduct could qualify as a criminal offense (for example, harassment or stalking) or an actionable civil tort (for example, invasion of privacy or intentional infliction of emotional distress).

At least six other states have imposed various criminal or civil restrictions on doxing, with some states restricting doxing generally and others restricting doxing that targets specific individuals like peace officers, public officials, and health care workers.

Summary of Engrossed Substitute Bill:

Prohibition on Doxing.

No person may publish an individual's personal identifying information when:

- the publication is made without the express consent of the individual whose information is published;
- the publication is made with:
 - intent or knowledge that the personal identifying information will be used to harm the individual whose information is published; or
 - reckless disregard for the risk the personal identifying information will be used to harm the individual whose information is published; and
- the publication causes the individual whose information is published to suffer:
 - physical harm;
 - significant economic injury;
 - mental anguish;
 - fear of serious bodily injury or death for themselves or a close relation to themselves; or
 - a substantial life disruption.

Civil Action.

A person whose information is published in violation of this restriction may bring a civil

action against: (1) the person who published the information; and (2) any person who knowingly benefits from participation in a venture they knew or should have known has engaged in a violation of these restrictions. An action may be brought in any county in which an element of the violation occurred or in which an individual whose information was published resides.

A prevailing claimant may recover compensatory damages, punitive damages, statutory damages of \$5,000 per violation, costs and reasonable attorneys' fees, injunctive relief, and other relief deemed appropriate by the court. Additionally, a court may issue a temporary restraining order, or temporary or permanent injunction, to prevent disclosure or continued disclosure of a party's personal identifying information.

Exceptions, Defenses, and Construction.

The foregoing restrictions are subject to exceptions. A person does not violate this section by:

- providing another person's personal identifying information with the reporting of criminal activity to an employee of a law enforcement, intelligence, or other government agency in the United States, or in connection with the activities of a law enforcement, intelligence, or other government agency in the United States, but only if the information is believed to be accurate and provided in good faith;
- providing personal identifying information in connection with an exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution;
- providing personal identifying information to, or in the course of acting as or on behalf of, "news media" as defined by Washington law;
- providing personal identifying information to a requestor in response to a lawful request under the Public Records Act, if the disclosure conforms to the requirements of the Public Records Act;
- providing personal identifying information when required to do so by any federal, state, or local law or regulation, or court rule or court order, but only if the information is believed to be accurate and provided in good faith;
- providing personal identifying information in connection with a lawful requirement for a court filing or recording;
- providing personal identifying information as permitted under the federal Gramm-Leach-Bliley act and Consumer Financial Protection Bureau Regulation P, consistent with privacy policy disclosures provided pursuant to such regulation; and
- providing personal identifying information in compliance with the Fair Credit Reporting Act or Fair Debt Collection Practices Act.

It is not a defense that the information at issue was voluntarily given to the publisher, previously publicly disclosed, or readily discoverable through research or investigation.

The act shall not be construed to conflict with 47 U.S.C. Sec. 230 or 42 U.S.C. Sec. 1983,

or to prohibit constitutionally protected activities.

The act shall be liberally construed and applied to promote its purpose to deter doxing, protect persons from doxing, and provide adequate remedies to victims of doxing.

Defined Terms.

Several terms are expressly defined.

"Doxing" means unauthorized publication of personal identifying information with intent or knowledge that the information will be used to harm the individual whose information is published, or with reckless disregard for the risk the information will be used to harm the individual whose information is published.

"Harm" means bodily injury, death, harassment, or stalking.

"Mental anguish" means emotional distress or emotional suffering as evidenced by anxiety, fear, torment, or apprehension that may or may not result in a physical manifestation of mental anguish or a mental health diagnosis. The mental anguish must be protracted and not merely trivial or transitory.

"Personal identifying information" means any information that can be used to distinguish or trace an individual's identity, including without limitation name, prior legal name, alias, mother's maiden name, or date or place of birth, in combination with any other information that is linked or linkable to an individual such as:

- social security number, home address, mailing address, phone number, email address, social media accounts, or biometric data;
- medical, financial, education, consumer, or employment information, data, or records;
- any other sensitive private information that is linked or linkable to a specific identifiable individual, such as gender identity, sexual orientation, or any sexually intimate visual depiction; or
- any information, including without limitation usernames and passwords, that enables access to a person's email accounts, social media accounts, electronic forum accounts, chat or instant message accounts, cloud storage accounts, banking or financial accounts, computer networks, computers or phones, teleconferencing services, video-teleconferencing services, or other digital meeting rooms.

"Publish" means to circulate, deliver, distribute, disseminate, post, transmit, or otherwise make available to another person, through any oral, written, visual, or electronic communication.

"Substantial life disruption" means that a person significantly modifies their actions, routines, employment, residence, appearance, name, or contact information to avoid or protect against an actor who has obtained or is using the person's personal identifying information, or because of the course of conduct of an actor who has obtained or is using

the person's personal identifying information. Examples include, without limitation, changing a phone number, changing an electronic mail address, deleting personal electronic accounts, significantly decreasing use of the internet, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule, or losing time from work or a job.

Additional terms are defined in the bill.

EFFECT OF SENATE AMENDMENT(S):

As amended by the Senate, the bill contains the following changes:

- The requirement for actionability that a publication of personal identifying information causes the individual whose information is published to suffer physical “harm” (or other cognizable damages) is modified to require physical “injury” (or other cognizable damages).
- The words “another person’s” are removed from the underlying bill’s exception for providing personal identifying information with the reporting of criminal activity, making this exception’s language consistent with other exceptions in the bill.
- The exception for providing personal identifying information in response to a Public Records Act (PRA) request is modified to remove the requirement that the PRA request be lawful and the disclosure conform to the requirements of the PRA.
- An exception is added for providing personal identifying information in a consumer alert or public notice arising from a regulatory, civil, or criminal investigation, complaint, or enforcement action, but only for publications made by government agencies.
- An exception is added for providing personal identifying information within or to a government agency, corporation, company, partnership, labor union, or another legal entity, or to any employees or agents thereof, but only if the information is provided for a legitimate and lawful purpose, through a private channel of communication and not to the public, and the provider reasonably believes the information to be accurate or has reasonable suspicion it is being used fraudulently, and the provider acts in good faith and not for a malicious or fraudulent purpose.
- An exception is added for providing personal identifying information on behalf of a state agency, the health benefit exchange, a tribal nation, a contracted service provider of a state agency or the health benefit exchange, or the lead organization or a data vendor of the all-payer health care claims database under chapter 43.371 RCW, if the information was provided in a manner legally permitted under federal or state law or regulation.
- A technical correction is made to the definition subsection of the bill, describing it as a subsection rather than a section.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Doxing is the broadcasting of personal information with intent to direct violence towards the victim. It is an increasingly common way to harass, harm, stalk, silence, and intimidate, and is being abused by both ends of the political spectrum to target private citizens and public officials alike, and has intensified during the pandemic. In Idaho, activists have used doxing to harass targets in coordinated campaigns. Reports show 65 percent of Americans report being harassed online. Antisemitism and hate are permeating online spaces. Many communities are particularly vulnerable when their personal information is released with intent to harm. Marginalized communities already face a risk of violence; they deserve more protection.

When a community or individual is targeted, it can have deep and lasting effects. Recent targets of doxing include union members, nurses and other healthcare workers, librarians and library staff, school workers and staff, Jewish individuals and communities, nonprofit board members and directors, and elected officials. Information about the targets' homes and family members is being disclosed, leading to threats and vandalism. While public figures must expect some measure of scrutiny, disclosing home address and family member information goes too far. Doxing instills terror.

When a person publishes information with intent to harm, and harm occurs, a right of recovery should exist. This bill provides access to justice and recourse for individuals victimized by intentional doxing. The bill is a pragmatic solution to doxing, will deter bad actors and make victims whole, and protect marginalized communities from harassment, stalking, and violence.

Existing civil torts like outrage and criminal laws against harassment may sometimes cover doxing, but these common law torts and crimes are subject to broad requirements. It is simpler to plead and prove the exact conduct at issue under this bill and eliminate the argument that the conduct does not rise to the level of outrage.

Doxing chills public discourse and is an affront to constitutional principles and rights. No person should be afraid to speak publicly and civilly. This bill is a good middle ground, balancing free speech concerns with the need to deter harassment and intimidation. The bill codifies doxing and applies narrowly to the most egregious cases. It will apply to unlawful doxing with intent to stalk or cause death, not investigators or journalists.

(Opposed) None.

Persons Testifying: Representative Drew Hansen, prime sponsor; Sheri Sawyer, Office of the Governor; Yvette Maganya, Legal Voice; Gavin Downing; Sybill Hppolite, Washington

State Labor Council; Miri Cypers, Anti-Defamation League; Paul Schneider, Spokane Human Rights Task Force; Bill Mowat, Jewish Community Relations Council; and Brett Gailey, City of Lake Stevens.

Persons Signed In To Testify But Not Testifying: None.